



## Remediation and Redevelopment Program

April 2017

# Management of Contaminated Soil and Other Solid Wastes

## Wis. Admin. Code §§ NR 718.12 and NR 718.15

### Purpose

This guidance is intended for use by responsible parties when excavating contaminated soil and/or other waste materials that may not warrant disposal at an operating, licensed landfill. This guidance describes several exemptions that may be available in such situations.

### Related Guidance

The following DNR guidance documents may be useful to responsible parties when determining the proper protocol for managing soil, contaminated soil, and other solid wastes, particularly during response actions:

- *Exempting Low-Hazard Wastes from Solid Waste Regulations*, DNR publication WA-1645
- *Obtaining DNR Approval Prior to Use of Imported Soil and Other Fill Materials on Voluntary Party Liability Exemption Sites*, Wis. Stats. § 292.15, DNR publication RR-041
- *Waste Determinations & Recordkeeping*, DNR publication WA1152
- *PCB Remediation in Wisconsin under the One Cleanup Program Memorandum of Agreement*, DNR publication RR-786
- *Guidance for Hazardous Waste Remediation*, DNR publication RR-705

### Background

Contaminated soil and other solid wastes that are generated as part of a response action under the state's clean-up rules may be eligible for an exemption from state solid waste laws in Wis. Stats. § 292 and Wis. Admin. Code §§ NR 500 to 538. The Wis. Admin. Code § NR 700 rule series governs the response to and cleanup of hazardous substance discharges and environmental pollution. These exemptions to solid waste management are granted under Wis. Admin. Code §§ NR 500.08(6), NR 718.12 and NR 718.15. See the "Quick Guide" in Appendix 1 for an overview.

Where contaminated soil or other solid waste at a response action pose fewer hazards (e.g., lower concentration of substances and smaller volume of materials) to human health and the environment, these exemptions allow for options other than management at an operating facility licensed to take that solid waste. This guidance is applicable to situations where contaminated soil or other solid waste from a response action site is proposed to be managed at a location *other than* an operating, licensed solid waste facility. Wis. Admin. Code § NR 718.12 and NR 718.15 do not apply to management of hazardous waste or TSCA regulated waste.

### Applicability

In general, once contaminated soil and other solid waste (e.g., contaminated sediment, fly ash, or foundry fill) are excavated they must be managed in accordance with local, state and federal laws. The solid waste exemptions created in Wis. Admin. Code §§ NR 718.12 and 718.15 are intended to streamline the management of contaminated soil and other solid wastes generated as part of an environmental response action.

**Response action** is defined in Wis. Admin. Code § NR 700.03(50) to mean "any action taken to respond to a hazardous substance discharge or to environmental pollution, including emergency and non-emergency immediate actions, investigations, interim actions and remedial actions."

A response action site would include any *site or facility* subject to jurisdiction under Wisconsin Statutes (Wis. Stats.) § 292 and Wis. Admin. Code § NR 700 rule series, *whether the person has or has not notified the Department of Natural Resources (DNR) of a discharge of a hazardous substance under Wis. Admin. Code § NR 706*. Information on reporting a discharge of a hazardous substance to the environment can be found at this website: <http://dnr.wi.gov/topic/Spills/>.

This guidance covers the following two exemptions in Wis. Admin. Code § NR 718 relating to managing certain types of solid waste materials, including contaminated soil, during response actions – rather than managing them at an operating, licensed solid waste facility:

- **NR 718.12 – Applies to contaminated soil management:** Where the contaminated soil will be managed on the same property or at a different property that meets the definition of “site or facility.”
- **NR 718.15 – Applies to other solid waste management:** Where solid waste materials, other than contaminated soil, are being generated during a response action, the Wis. Admin. Code § NR 718.15 exemption may allow the material to be placed in a safe manner on the site or facility from which it was generated rather than being taken to an operating, licensed solid waste facility. “Other solid wastes” includes materials such as contaminated sediments, fly ash, debris, or foundry sand. An exemption though Wis. Admin. Code § NR 718.15 is generally not granted to manage asbestos containing materials.

### Definitions for Types of Soil or Other Materials

“**Clean soil**” is a term used in Wis. Admin. Code § NR 500.08(2)(a) to categorize a type of soil that is eligible for a clean fill exemption under state solid waste law.

The remaining definitions listed below are from Wis. Stats. § 292 and Wis. Admin. Code § NR 700 rule series, as noted:

“**Contaminated sediment**” means sediment that contains a hazardous substance. [Wis. Stats. § 292.01(1s)]

“**Contaminated soil**” means soil which contains one or more hazardous substances or environmental pollution and which is not a hazardous waste as defined in s. NR 660.10 (52) or 42 USC. [Wis. Admin. Code § NR 718.03(5)]

“**Sediment**” means particles in the bed of navigable water up to the ordinary high-water mark that are derived from the erosion of rock, minerals, soil, and biological materials and from chemical precipitation from the water column and that are transported or deposited by water. [Wis. Stats. § 292.01(17g)]

“**Soil**” means unsaturated organic material, derived from vegetation and unsaturated, loose, incoherent rock material, of any origin, that rests on bedrock other than foundry sand, debris and any industrial waste. [Wis. Admin. Code § NR 700.03(58)]

## DNR Program Responsibility

Unless the contaminated soil or other solid waste is being taken to an operating, licensed solid waste facility, the management of contaminated soil and certain solid wastes as part of a response action should follow the provisions in Wis. Admin. Code § NR 718, entitled “Management of Contaminated Soil or Solid Wastes Excavated During Response Actions” and should be submitted to the Remediation and Redevelopment (RR) Program project manager. Thus, where the reference to “DNR” appears in this guidance it is referring to the RR program, unless explicitly noting the roles and responsibilities of the Waste and Materials Management (WMM) program.

There may be limited situations where management of soil excavated from a site/facility other than a response action site/facility would be regulated by the WMM program. An example of that would be where excavated soil containing concentrations greater than background with no known source need to be properly managed. In such a situation, a low-hazard waste grant of exemption may be an option. The WMM program project manager will consider the provisions in Wis. Admin. Code § NR 718, to guide the disposal of non-response action contaminated soil at a site or facility, other than at an operating, licensed landfill. Please refer to the DNR publication WA-1645, *Exempting Low-Hazard Wastes from Solid Waste Regulations*, for more information on low-hazard exemptions.

## Definition of “Site” or “Facility”

Contaminated soils may be excavated from one response action site or facility and managed in accordance with the exemption under Wis. Admin. Code §§ NR 718.12 (1) and/or (2) on either: the same site or facility from which the contaminated soil was excavated; or at another location that meets the definition of “site” or “facility.” This guidance provides annotated definitions of “site” and “facility” which are summarized below; these definitions are for guidance purposes only and should not be relied on to make regulatory decisions. These terms are more fully defined in both Wis. Stats. § 292.01 and Wis. Admin. Code § 700.03. [Note: Italics denotes statutory or administrative code definitions.]

### “Site” means:

1. Any “*waste site*” as defined in Wis. Stats. §. 292.01 (21) and Wis. Admin. Code § NR 700.03(56)(a). A “waste site” is “*any site, other than an approved facility, an approved mining facility or a non-approved facility, where waste is disposed of regardless of when disposal occurred or where a hazardous substance is discharged before May 21, 1978.*” In essence, this type of property would be an unlicensed, historical solid waste site; or
2. “*any area where a hazardous substance has been discharged,*” as defined in Wis. Admin. Code § NR 700.03(56)(b). This would include any site listed in the Bureau for Remediation and Redevelopment Tracking System (BRRTS) as a Spill, an Environmental Repair Program (ERP) site, a Leaking Underground Storage Tank (LUST) site, or a Voluntary Party Liability Exemption (VPLE) site.

### “Facility” means:

An “approved facility” as defined in s. 289.01 (3), Stats., includes an “*approved mining facility*” as defined in s. 292.01 (1m), Stats., and a “*non-approved facility*” as defined in s. 289.01 (24), Stats.

**NOTE:** A Wis. Admin. Code § NR 718.12 solid waste exemption is not required if the contaminated soil will be managed at an operating, licensed facility approved to accept that waste.

Under Wis. Admin. Code § NR 718.12, it is assumed the DNR is granting a one-time exemption to take contaminated soil to the type of “facility” listed below that are no longer in operation. This includes, but is not limited to, the following types of non-operational (i.e., closed) “facilities” defined under Wis. Stats. §§ 289, 293 and 295:

- a non-operating, licensed “solid or hazardous waste *disposal* facility with an approved plan of operation”;
- A non-operating, licensed “approved mining facility” used for the disposal of solid waste resulting from mining, or “mining waste site”; or
- A non-operating, “non-approved facility” such as “a licensed solid or hazardous waste disposal facility which is not an approved facility.”

## Eligibility

The following persons *may* be eligible for the exemptions in Wis. Admin. Code §§ NR 718.12 and NR 718.15:

- A person who meets the definition of a “**responsible party**” (RP). Further details on who may or may not be considered a RP under Wis. Stats. § 292 and Wis. Admin. Code § NR 700 are provided below.
- “A person who is managing contaminated soil as part of a **utility project or other construction-related activity** can generally manage the material in accordance with Wis. Admin. Code§ 718.12 (1). However, that person should contact the DNR upon discovery of contaminated soil for direction on how to proceed.” A list of DNR regional contacts is provided below. Depending on the contaminant levels, volume and location of the waste, and whether the waste was excavated at a response action site or facility, the materials may need to be taken to a licensed, operating solid waste facility or handled under a low-hazard waste grant of exemption (See DNR publication WA-1645 for further guidance).

The exemptions in Wis. Admin. Code §§ NR 718.12 and 718.15 can be applied for by the RP in the following situations:

- Soil, containing no waste or a minor proportion of waste, excavated from a response action site will be managed at a site or facility. Soil could be managed on the same site from which it was excavated, or at a different site or facility.
- Other waste material, such as foundry sand, fly ash, or dewatered sediment, is proposed to be managed at the response action site from which it was generated.

The exemptions in Wis. Admin. Code §§ NR 718.12 and 718.15 do not apply to the following situations:

- Where the generator has made the determination that the soil is not considered “contaminated.”
- Contaminated soils and other solid wastes (e.g., contaminated sediments, fill, and foundry sand) being managed at an operating solid waste facility licensed to accept that solid waste.
- Soils that are contaminated with substances that require them to be managed as either a hazardous waste under the Wis. Admin. Code § NR 600 rule series or as a federal, Toxic Substance Control Act (TSCA) regulated waste (i.e., certain concentrations of, or situations involving PCBs).
- Asbestos-containing materials (ACMs).
- Management of “other solid waste materials” at a different response action site or facility from where they were originally discharged. These materials may be eligible for another type of exemption under s. 289.43, Wis. Adm. Code from the Waste and Materials Management Program.
- Management of contaminated soil at a property that does not meet the definition of “site” [NR 700.03(57)] or “facility” [NR 700.03(21)], as defined in Wis. Stats. § 292 and Wis. Admin. Code § NR 700.03. Contaminated soil should not be disposed of at a property with no environmental contamination impacts (e.g., hazardous substance discharges or environmental pollution).

## **Responsibility Under Wis. Stats. § 292**

The exemptions provided in Wis. Admin. Code §§ NR 718.12 and 718.15 are available to any person who meets the definition of a “responsible party” (RP) under Wis. Admin. Code § NR 700 rule series and Wis. Stats. § 292.

The Spill Law, Wis. Stat. § 292.11(3), defines a responsible party as “a person who possesses or controls a hazardous substance which is discharged or who causes the discharge of a hazardous substance shall take the actions necessary to restore the environment to the extent practicable and minimize the harmful effects from the discharge to the air, lands or waters of this state”. In general, the following definitions from Black’s Law Dictionary and citations from Wisconsin case law may aid in determining who may be considered a person who “possesses, controls or causes” a hazardous substance discharge. However, the DNR will assess each discharge on a case-by-case basis.

**Cause a hazardous substance discharge** means:

- To be the cause or occasion of; to effect as an agent; to bring about; to bring into existence; to make to induce; to compel (verb).
- Each separate antecedent of an event. Something that precedes and brings about an effect or result. A reason for an action or condition...An agent that brings something about. That which in some manner is accountable for condition that brings about an effect or that produces a cause for the resultant action or state. (noun) (Definitions from *State of Wisconsin v. Chrysler Outboard Marine Corporation*; Black’s Law Dictionary – 6<sup>th</sup> edition – 1990)
- A person can bring about a discharge of a hazardous substance by not only acting affirmatively, but also by failing to act. (*State of Wisconsin v. Chrysler Outboard Marine Corporation*, 219 Wis 2d 130(1988))

**Possesses a hazardous substance** means:

- To have in one’s actual control; to have possession of;
- The fact of having or holding a property in one’s power; the exercise of dominion over property. The

right under which one may exercise control over something to the exclusion of all others (i.e., possession) (Black's Law Dictionary – 8<sup>th</sup> edition 2004)

- The person owns the property where the hazardous substance discharge is occurring or occurred. (*State of Wisconsin v. Mauthe*, 123 Wis. 2d 288 (1985))

**Controls a hazardous substance** means:

- To exercise power or influence over; to regulate or govern; have a controlling interest in. (verb)
- The direct or indirect power to direct the management and policies of a person or entity, whether through ownership of voting securities; by contract or otherwise; the power of authority to manage, direct or oversee. (noun) (Black's Law Dictionary – 8<sup>th</sup> edition 2004)

RPs must immediately notify the DNR of a discharge of a hazardous substance that occurs or is discovered pursuant to Wis. Admin. Code § NR 706, and must take the necessary response actions under state law. A person is subject to Wis. Stats., § 292 even if they have not yet notified the DNR of a discharge and even if the DNR has not yet directed them to take appropriate actions. (*State of Wisconsin v. Chrysler Outboard Marine Corporation*, 219 Wis 2d 130(1988))

## Waste Determination

Responsible parties must determine if excavated soil must be managed as “contaminated soil” that will require DNR approval as part of the waste management process. Professional judgment must be used to determine if the material being excavated is subject to certain provisions of the solid waste laws. This is generally referred to as making a “waste determination”. The waste determination is typically based on generator knowledge of the soil or waste material. Even at a response action site, a waste determination is highly recommended so the proper handling of any materials generated – whether as part of a cleanup, utility work or development activities - are managed in a manner protective of the human health, safety, welfare and the environment. There may be response action sites/facilities where a waste determination renders some of the soil that is generated as “not contaminated soil,” some as having to be managed as a “solid waste” and other materials as having to be managed as a “hazardous waste.” If there is any reason to believe that a release of contaminants has impacted the soil or that the waste material may contain a hazardous substance analytical testing of the material will be needed to determine how it must be managed. The number of soil samples required to characterize a given volume of waste soil is outlined in Wis. Admin. Code § NR 718.12 (1)(e) and outlined in the text box on page 11.

If a RP who is generating the material makes a faulty determination that material being managed is not contaminated soil and future placement of that soil or other solid waste ultimately results in environmental pollution or a discharge of a hazardous substance, the RP and the receiving property owner may be held responsible for cleaning up the contamination in accordance with Wis. Stats § 292 – the Spill Law and Environmental Repair Law. (*State of Wisconsin v. Chrysler Outboard Marine Corporation*, 219 Wis 2d 130(1988)). It is in the best interest of the receiving property owner to ensure that an acceptable waste determination has been made by the RP and that the material is managed in accordance with state law.

The DNR recommends that RPs document and maintain a record of their solid waste determinations, even though it is not required by state law. [Note: Wis. Admin. Code § NR 600 does require the generator to maintain documentation of a waste determination involving hazardous waste.] Wis. Stats. § 291.21 requires that “any person generating solid waste shall determine if the solid waste is a hazardous waste.” Thus, where it is reasonably expected that the solid waste may be a hazardous waste, documentation of the hazardous waste determination is required in accordance with Wis. Admin. Code § 661.02. Where RPs or others are importing soil or other solid wastes to a site or facility participating in the Voluntary Party Liability Exemption process, RPs should follow the soil testing procedures in the DNR's guidance *Obtaining DNR Approval Prior to Use of Imported Soil and Other Fill Materials on Voluntary Party Liability Exemption Sites*, Wis. Stats. § 292.15, DNR publication RR-041.

## NR 718 Exemption Options

An RP undertaking a response action may be eligible for one or more of the exemptions in Wis. Admin. Code §§ NR 718.12 and 718.15. Any soil excavated as a result of these response actions must be stored in accordance with Wis. Admin. Code § NR 718.05, unless the exemption in Wis. Admin. Code § NR 708.05(5)(b) applies. The requirements and process for being granted an exemption will differ based on the type of response action being undertaken and the exemption criteria that apply to those Wis. Admin. Code § NR 700 actions. The “NR 718 Quick Guide” in Appendix 1 provides a summary of the three types of exemptions available to manage contaminated soil or other solid waste at a site or facility. Wis. Admin. Code §§ NR 718.12 and 718.15 provides for these exemptions:

1. **NR 718.12 (1) Exemption for “immediate actions” involving contaminated soil** – this exemption is *generally* considered a self-implementing option. If the RP’s actions meet the criteria in Wis. Admin. § NR 718.12(1) they do not need the DNR’s approval to proceed with the management of the contaminated soil.
2. **NR 718.12 (1) and (2) Exemption for “interim or remedial actions” involving contaminated soil** – this exemption requires DNR review and approval *before* an interim or a remedial action may be taken pursuant to the exemption.
3. **NR 718.15 Exemption for “interim or remedial actions” involving other solid waste** - this exemption requires a DNR review and approval *before* an interim or a remedial action may be taken pursuant to the exemption.

### Response Action Definitions

The following definitions are from Wis. Stats. § 292 and Wis. Admin. Code § NR 700.03:

**“Immediate action”** means a response action that is taken within a short period of time after the discharge of a hazardous substance occurs, or after the discovery of a hazardous substance discharge or environmental pollution, to halt the discharge, contain or remove discharged hazardous substances or remove contaminated environmental media, in order to restore the environment to the extent practicable and to minimize the harmful effects of the discharge to air, lands and waters of the state and to eliminate any imminent threat to public health, safety, or welfare that may exist. This term includes both emergency and non-emergency immediate actions. [NR 700.03(28)]

**“Interim action”** means a response action taken to contain or stabilize a discharge of a hazardous substance, in order to minimize any threats to public health, safety, or welfare or the environment, while other response actions are being taken or planned for the site or facility. [NR 700.03(29)]

**“Remedial action” or “remedy”** means those response actions, other than immediate or interim actions, taken to control, minimize, restore, or eliminate the discharge of hazardous substances or environmental pollution so that the hazardous substances or environmental pollution do not present an actual or potential threat to public health, safety, or welfare or the environment. The term includes actions designed to prevent, minimize, stabilize, or eliminate the threat of discharged hazardous substances, and actions to restore the environment to the extent practicable and meet all applicable environmental standards. Examples include storage, disposal, containment, treatment, recycling, or reuse, and any monitoring required to assure that such actions protect public health, safety, and welfare and the environment. [NR 700.03(48)]

**“Response” or “response action”** means any action taken to respond to a hazardous substance discharge or to environmental pollution, including emergency and non-emergency immediate actions, investigations, interim actions and remedial actions. [NR 700.03(50)]

It is the responsibility of the RP to sufficiently document for the DNR’s approval how the waste characteristics and proposed management approach will not cause a discharge of a hazardous substance to the environment or result in environmental pollution under Wis. Stats. § 292, or cause a violation of other environmental laws, such as Wis. Stats. §160 and Wis. Admin. Code § NR 140 relating to groundwater quality.



## **NR 718.12(1) Exemption: Immediate Actions Involving Management of Contaminated Soil at a Response Action Site or Facility**

### **Eligibility**

RPs undertaking immediate actions involving contaminated soil under Wis. Admin. Code § NR 708.05 may be eligible for a self-implementing (i.e., does not require DNR approval) exemption in Wis. Admin. Code § NR 718.12(1)<sup>1</sup>. The RP is generally eligible if:

1. Actions will be conducted in accordance with Wis. Admin. Code § NR 700 to 754.
2. Materials being managed are contaminated soil that are proposed to be managed on the response action site/facility from which they were excavated or at another property that meets the definitions of “site” or “facility” in Wis. Admin. Code § NR 700.03.
3. The response action does not result in the excavation and disposal, treatment or storage of more than 100 cubic yards of contaminated soil, debris, sediment or a combination of these media from a single site or facility, as specified in Wis. Admin. Code NR § 708.05(3)(b)2.
4. Locational criteria in Wis. Admin. Code § NR 718.12(1)(c) are met, or a written exemption is granted by the DNR from those locational criteria. [Refer to the text box on page 12 for locational criteria and exemptions.]
5. The placement of the contaminated soil will not pose a threat to public health, safety, welfare and the environment. In determining this, the RP should ensure that:
  - a. **SOIL.** Soil sampling demonstrates that the contaminated soil does not attain or exceed the applicable Wis. Admin. Code § NR 720 (the “NR 720”) soil clean-up standards for the type of land use classification (i.e., industrial or non-industrial as specified in Wis. Admin. Code § NR 720.05(5)) for both direct contact and the groundwater migration pathways. In addition:
    - i. When a RP proposes to take contaminated soil from one site or facility to another site or facility, and the concentration of substances in the contaminated soil exceeds the NR 720 non-industrial soil direct contact standards but not the industrial RCLs or groundwater RCLs, the receiving site or facility must meet the definition of “industrial land use” in Wis. Admin. Code § NR 700.03 (28m), and that site or facility must be zoned as “industrial.”
    - ii. The concentrations of substances in the contaminated soil that will be managed and the land use of the site/facility – whether based on an industrial or non-industrial land use classification in accordance with Wis. Admin. Code § NR 720.05(5) - are such that no cap, cover or performance standard would be otherwise required by the DNR under Wis. Admin. Code §§ NR 720, 722 and 726.
    - iii. The material is not hazardous waste.
  - b. **GROUNDWATER.** Soil sampling and location of placement of contaminated soil will not result in an attainment or exceedance of groundwater quality standards in Wis. Stats. § 160 and Wis. Admin. Code § NR 140.
  - c. **VAPOR.** No vapor intrusion would result from the placement of the contaminated soil.
  - d. **OTHER.** All other pathways of concern at the site or facility (e.g, surface water and sediment) are protective of public health, safety, welfare and the environment. Further definition under Wis. Admin. Code § NR 700 rule series on what is “protective” may be referenced in Wis. Admin. Code §§ NR 708.11, NR 722.09, and NR 726.05.

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<sup>1</sup> A person who is managing contaminated soil as part of a utility project or other construction-related work can generally manage the material in accordance with Wis. Admin. Code § NR 718.12 (1). Depending on the contaminant concentrations, volume and location, the materials may need to be taken to a licensed, operating solid waste facility or alternatively, may be handled under a low-hazard waste grant of exemption. (See DNR publication WA-1645 for further guidance.)

## Documentation

While the RP does not need pre-approval from the DNR to conduct an immediate action involving contaminated soils if the proposed immediate action meets all the requirements in Wis. Admin. Code § NR 718.12(1), the RP is required to:

- Conduct sampling of the contaminated soil in accordance with the requirements in Wis. Admin. Code § NR 718.12(1)(e), unless the DNR has approved an alternate sampling and analysis proposal. [Refer to text box on page 11] ;
- Report all analytical results to the DNR within 10 business days after receiving the sampling results, in accordance with Wis. Admin. Code § NR 718.12(1) ; and
- Submit written documentation to the DNR within 45 days of the completion of the immediate action, including the Wis. Admin. Code § 718.12(1) soil management documentation, in accordance with the requirements in Wis. Admin. Code § NR 708.05(6).
- The written documentation shall include all of the following:
  1. A statement expressing the purpose of the submittal and the desired DNR action or response.
  2. Name, address and telephone number of the responsible parties.
  3. Location of the site or facility where the material was excavated and the location of the site or facility where the contaminated soil was placed including street address; quarter-quarter section, township, range, and county; and the location information specified in Wis. Admin. Code § NR 716.15 (5) (d); latitude and longitude, and legal description of lot, if located in platted area.
  4. Any information required under Wis. Admin. Code § NR 706 that has not been provided to the DNR previously.
  5. The type of engineering controls, treatment or both and the effluent quality of any permitted or licensed discharge.
  6. The type, total volume and final disposition of the discharged hazardous substance, environmental pollution and contaminated materials generated as part of the immediate action, including legible copies of manifests, receipts and other relevant documents. This should include a narrative description as to how each of the locational requirements in Wis. Admin. Code § NR 718.12(1) were met.

## Interim or Remedial Actions Taken at Response Action Sites: NR 718 Exemptions for the Management of Contaminated Soils or Other Solid Wastes

### Overview

RPs undertaking interim and/or remedial actions involving the management of contaminated soil may be eligible for the Wis. Admin. Code § NR 718(1) and (2) exemption as an alternative approach to taking select material to an operating solid waste facility licensed to accept that waste. Additionally, if “other solid waste” is proposed to be managed on the site or facility from which it was excavated, the exemption in Wis. Admin. Code § NR 718.15 may be an alternative to taking the material to an operating, licensed solid waste facility.

Unlike the immediate action exemption in Wis. Admin. Code § NR 718.12(1), an RP must receive written, prior approval from the DNR to use the exemptions in Wis. Admin. Code §§ NR 718.12(1) and (2) or NR 718.15 for an interim or remedial action. An applicant should provide a complete application submittal to the DNR at least 7 days prior to taking the proposed actions, and receive approval prior to taking those actions. However, the DNR may take a longer period of time to review a submittal. Please refer to “Application Process” section of this guidance for more information on planning and timing of your projects.

## NR 718.12(1) and (2) Exemption: Interim and Remedial Actions Involving Management of Contaminated Soil at a Response Action Site or Facility

### Eligibility

The DNR uses professional judgment in assessing the factors established in law to determine if and when a Wis. Admin. Code §§ NR 718.12(1) and (2) exemption can be issued. RPs may apply for this exemption for



contaminated soils when the proposed interim or remedial action complies with the following:

1. Actions will be conducted in accordance with Wis. Admin. Code §§ NR 700 to 754.
2. Materials being managed are contaminated soil that are proposed to be managed on the site or facility from which they were excavated or at another location that meets the definition “site” or “facility” under Wis. Admin. Code § NR 700.03.
3. Locational criteria in Wis. Admin. Code § NR 718.12(1)(C) are met, or a written exemption is granted by the DNR from those locational criteria. [See the text box on page 12 for locational criteria and the locational criteria exemption.]
4. The placement of the contaminated soil will not pose a threat to public health, safety, welfare and the environment. In determining this, the RP should ensure that:
  - a. **SOILS.** All direct contact or groundwater migration concern, in accordance with Wis. Admin. Code §§ NR 140, NR 718.12 (2) and NR 720, are addressed through an engineered cap, soil cover or other performance measures.
  - b. **GROUNDWATER.** An attainment or exceedance of groundwater quality standards in Wis. Stats. § 160 and Wis. Admin. Code § NR 140, would not occur based on soil sampling and/or the location of placement of the contaminated soil.
  - c. **VAPOR.** No vapor intrusion would result from the placement of the contaminated soil.
  - d. **OTHER.** All other pathways of concern at the site or facility (e.g., surface water and sediment) are protective of public health, safety, welfare and the environment. Further definition under Wis. Admin. Code § NR 700 rule series on what is “protective” may be referenced in Wis. Admin. Code §§ NR 708.11, NR 722.09, and NR 726.05.

### **NR 718.15 Exemption: Interim or Remedial Actions Involving Management of Other Solid Waste (i.e., not including contaminated soil) at a Response Action Site Eligibility**

The DNR uses professional judgment in assessing the factors established in law to determine if and when a Wis. Admin. Code § NR 718.15 exemption can be issued. RPs may apply for this exemption for solid wastes generated as part of an interim or remedial action (other than contaminated soils) when the proposed interim or remedial action complies with the following:

1. Actions will be conducted in accordance with Wis. Admin. Code §§ NR 700 to 754<sup>2</sup>.
2. The material is a solid waste (other than contaminated soil) and that waste is proposed to be replaced at the “site or facility” - as defined in Wis. Admin. Code § NR 700.03 – from which it was excavated as part of a response action. [See “Additional Considerations” section on page 15 for more information on exceptions to this general rule, including limitations on the management of asbestos-containing materials.]
3. Locational criteria in Wis. Admin. Code § NR 718.12(1)(c) are met, or a written exemption is granted by the DNR from those locational criteria. [See text box on page 12 for locational criteria and locational criteria exemption.]
4. The placement of the other solid waste will not pose a threat to public health, safety, welfare and the environment. In determining this, the RP should ensure that:
  - a. **SOLID WASTE.** All direct contact or groundwater migration concerns, in accordance with Wis. Admin. Code §§ NR 140, NR 500 rule series, NR 718.12 (1) and (2) and NR 720, are addressed through an engineered cap, soil cover or other performance measures.
  - b. **GROUNDWATER.** An attainment or exceedance of groundwater quality standards in Wis. Stats. § 160 and Wis. Admin. Code § NR 140, would not occur based on solid waste sampling and/or the

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<sup>2</sup> RPs proposing to manage “other solid waste” as part of an interim or remedial action are subject to the applicable provisions of the Wis. Admin. Code § NR 700 rule series, including the provisions of Wis. Admin. Code § NR 718.12 if they are requesting an exemption under Wis. Admin. Code § NR 718.15.

- location of placement of the solid waste.
- c. **VAPOR.** No vapor intrusion would result from the placement of the contaminated soil.
- e. **OTHER.** All other pathways of concern at the site or facility (e.g, surface water and sediment) are protective. Further definition under Wis. Admin. Code § NR 700 rule series on what is “protective” may be referenced in Wis. Admin. Code §§ NR 708.11, NR 722.09, and NR 726.05.

## **Application Process: NR 718 Exemptions for Interim and Remedial Actions Involving Contaminated Soil or Other Solid Wastes**

Where DNR approval of a Wis. Admin. Code § NR 718 exemption is required, the DNR will base its decision on the requirements in state law and professional judgment. By the DNR issuing an approval for one or more of these exemptions, the DNR is using its discretion to establish an alternative regulatory approach (i.e., full or partial approval of a proposal, possibly with added conditions) appropriate for the relatively lower risk posed by the planned disposal of the contaminated soil or other solid waste. The DNR’s discretion under Wis. Stats. § 292 and Wis. Admin. Code § NR 718 may be used to limit proposed projects, after considering such factors as the receiving site’s size, locational requirements, type and concentration of contaminants and similarity of this project compared to other regulated facilities such as landfills.

The DNR relies on the content and quality of the information submitted by the applicant to conduct a timely review and issue an approval. Applicants are encouraged to discuss their project with the DNR before submitting an exemption request for an interim or remedial action, which could help expedite the project. The submittal of a complete application at the outset of the initial request should receive faster review by the DNR.

RPs are required to obtain review and approval by the DNR of a soil or waste management plan prior to managing the materials under Wis. Admin. Code §§ NR 718.12(1) and (2) or NR 718.15. In order to comply with the exemption criteria, the RP is required to do all of the following at a minimum:

- **SAMPLING:** Conduct sampling of the contaminated soil or other solid waste material in accordance with the requirements in Wis. Admin. Code § NR 718.12(1)(e). [Refer to the text box on page 11.]
- **CONSULTANT QUALIFICATIONS:** Document that the person taking the samples meets the qualifications under Wis. Admin. Code §§ NR 712.05(3) and (4) and that all documents submitted to the DNR for the interim or remedial action include the appropriate certifications under Wis. Admin. Code NR 712.09.
- **SUBMITTAL:** Submit a **Wis. Admin. Code § NR 718 exemption application package** to the DNR at least 7 days<sup>3</sup>, and preferably 60 days, prior to taking the proposed action. The application package should include:
  - A soil or waste management plan, including all the applicable information required in Wis. Admin. Code §§ NR 718.12(2)(b) through (c);
  - Sampling and analysis results required under Wis. Admin. Code § NR 718.12(1) or an alternative sampling plan pre-approved by the DNR;
  - The information required in Wis. Admin. Code § NR 718.12(1) and (2)
  - The appropriate Wis. Admin. Code § NR 749 fees [Refer to the text box on page 13.]; and
  - The information requested in the “Additional Considerations” section of this guidance on page 15 if the site or facility where the material is proposed to be disposed of is regulated as a non-metallic mine.

A “Recommended Format for Requesting a § NR 718.12 or § NR 718.15 Exemption” has been prepared by the DNR that can be used by RPs and environmental consultants to provide the above information. The use of this document is not required, but is recommended to ensure that a complete request is prepared.

- **DNR RESPONSE:** Receive DNR approval prior to conducting any of the proposed contaminated soil or

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<sup>3</sup> Wis. Admin. Code § NR 718.12(2)(a) requires at least a 7 day notice.

other solid waste management activities;

- **CONTINUING OBLIGATIONS:** Comply with notification and continuing obligation requirements in Wis. Admin. Code § NR 718.12(2)(d) and (e) if the activities proposed in the soil or waste management plan will result in the need for a *continuing obligation* at the response action site or receiving site or facility. The RP shall comply with the notification, fee submittal, and database documentation requirements of Wis. Admin. Code §§ NR 718.12 and NR 725. Requirements relating to continuing obligations are more fully explained in the next section of this guidance;
- **DOCUMENTATION OF ACTIONS TAKEN:** RPs must submit written documentation to the DNR within 60 days<sup>4</sup> of the completion of the interim or remedial action involving engineering controls or barriers (e.g., caps). This should be done in accordance with the requirements in Wis. Admin. Code § NR 724.15. Where the documentation requirements of Wis. Admin. Code § NR 724.15 (e.g., no engineering control involved) do not apply, RPs are to follow the documentation requirements for interim actions in Wis. Admin. Code § NR 708.15. Either submittal should include documentation of the interim or remedial activities conducted on the site(s) and/or facility(ies) from which the solid waste was excavated and the site or facility at which the material was disposed.

### Sampling Requirements for Wis. Admin. Code §§ NR 718.12 and 718.15

Unless an alternative sampling methodology or protocol is approved by the DNR, responsible parties shall sample and analyze all contaminated soil and other solid waste in accordance with all the following requirements:

1. For each site or facility, one sample shall be collected for analysis for each 100 cubic yards of contaminated soil, for the first 600 yards with a minimum of 2 samples being collected. For volumes of contaminated soil that exceed 600 cubic yards, one sample for each additional 300 cubic yards shall be collected for analysis.
2. Samples shall be analyzed for all contaminants that were detected during a site investigation. In addition, available information shall be evaluated to determine what contaminants may have been discharged at the site or facility and samples shall be analyzed for those contaminants that are expected to be present based on past land use. [NOTE: Typical analytical parameters include volatile organic compounds (VOCs), polycyclic aromatic hydrocarbons (PAHs) and eight RCRA metals, but the actual parameters selected for analysis depends upon knowledge of the past uses of the site.]
3. All soil samples shall be collected from areas most likely to contain residual soil contamination.
4. Analyses must be conducted by a Wis. Admin. Code § NR 149 certified/registered laboratory.
5. Responsible parties shall report all analytical results to the DNR in writing within 10 business days after receiving the sampling results.

The DNR strongly encourages RPs considering less sampling and analysis than what is required in Wis. Admin. Code § NR 718.12(1) to contact the DNR in advance for pre-approval of such an approach.

<sup>4</sup> Wis. Admin. Code § NR 724.15(1) requires submittal of construction completion documentation for remedial actions, as well as interim actions involving on-site engineering controls or barriers (e.g., caps or covers).

## Locational Requirements

Responsible parties may not place or replace excavated contaminated soil or other solid waste excavated as part of an immediate, interim or remedial action in the following areas unless the DNR has granted a written exemption pursuant to Wis. Admin. Code § NR 718.12:

- Within a floodplain.
- Within 100 feet of any wetland or critical habitat area.
- Within 300 feet of any navigable river, stream, lake, pond, or flowage.
- Within 100 feet of any on-site water supply well or 300 feet of any off-site water supply well.
- Within 3 feet of the high groundwater level.
- At a depth greater than the depth of the original excavation from which the contaminated soil was removed.

## Exemption Requests from Locational Requirements

Where a written grant of exemption is being requested by the RP, it is the responsibility of the RP and his/her consultant to provide an *adequate rationale and supporting documentation* to the DNR that demonstrates why granting a Wis. Admin. Code § NR 718.12(1) locational criteria exemption would not cause a threat to public health, safety, welfare and the environment.

The RP should provide the DNR the following information - as specified in Wis. Admin. Code §§ NR 718.12(1)(c) and (d) - so that the DNR may make a determination on the RP's exemption request from locational requirements:

- Sufficient information as to how relevant state and federal laws, such as the Wis. Admin. Code §§ NR 700 to 754 rule series, would not be violated by granting the exemption.
- A description of waste characteristics and quantities.
- Adequate explanation of the geology and hydrogeology of the area, including information from well logs and well construction records for nearby wells.
- Rationale as to the unavailability of other environmentally suitable alternatives.  
The RP should clearly explain in the request how the placement of the contaminated soil or other solid waste materials will not pose a threat to public health, safety, welfare or the environment given all exposure and migration pathways of concern, including direct contact exposure (e.g., Wis. Admin. Code § NR 720), vapor intrusion, ground water, surface water, sediment and any other relevant pathways in the event the DNR grants the locational requirement exemption. Further definition under Wis. Admin. Code § NR 700 rule series on what is "protective" may be referenced in Wis. Admin. Code §§ NR 708.11, NR 722.09, and NR 726.05.
- RPs should use DNR publication RR-073, "Request from Locationa Criteria of NR 718.12(1)(c) for Managing Soil as an Immediate Action" to request this exemption for immediate actions. For RPs requesting an exemption while conducting an interim or remedial action, the location exemption request should be included in the overall NR 718.12 exemption request package.

## Continuing Obligations, Fees and Database Tracking For NR 718 Exemptions Related to Contaminated Soil or Other Solid Waste

Continuing obligations can be site-specific conditions (e.g., a maintenance plan for an engineering control) or a law (e.g., solid waste law) that requires the property owner or RP to maintain or comply with the long-term conditions placed on the site or facility due to residual contamination remaining at the end of the response action. Continuing obligations may be triggered at a site or facility, pursuant to Wis. Stats. § 292.12, and relevant chapters of Wis. Admin. Code § NR 700 rule series. A soil or waste management plan may be submitted to the DNR as part of an interim or remedial action. Where the implementation of a soil or waste management plan results in the need for a continuing obligation (e.g., an engineering control, or use of industrial zoning), as specified in Wis. Admin. Code § NR 725.05(2), the RP shall do the follow actions for both the response action site and any receiving site or facility:

1. Provide written notice to anyone meeting the criteria in Wis. Admin. Code § NR 725.05(1) at least 30

days prior to submitting the soil or waste management plan to the DNR.

2. Send the notification letters required in Wis. Admin. Code § NR 718.12(2)(d) in accordance with the procedures in Wis. Admin. Code § NR 725.07.
3. Provide to the DNR all applicable database documentation requirements as specified in Wis. Admin. Code § NR 726.11 (2) through (6).
4. Provide the appropriate Wis. Admin. Code § NR 749 database listing fee.

Using DNR publication, RR-072, “Recommended Format for Exemption Request Wis. Admin. Code § NR 718.12 or § NR 718.15 ” to request approval of an exemption will satisfy the above requirements. This document

### NR 749 Fees for Review of Wis. Admin. Code §§ NR 718.12 Soil or NR 718.15 Waste Management Plans

Soil or Waste Managed on the Generating Property			
Action	Action Fee	GIS Fee	Total On-Site Management Fee
<b>Immediate Actions</b> per NR 708.05(6), if SMP submitted in compliance with NR 718.12 (1)	\$350*	No fee	<b>\$350*</b>
<b>Interim Actions</b> per NR 708.11, with SMP and CO applied at other site/facility	\$700	No fee	<b>\$700</b>
<b>Remedial Action Plan</b> approval, with SMP, without residual soil CO	\$1050	No fee	<b>\$1050</b>
<b>Remedial Action Plan</b> approval, with SMP, with residual soil CO	\$1050	\$300	<b>\$1350</b>
<b>SMP</b> submitted separately from a RAP or CO modification, without residual soil CO	\$700	No fee	<b>\$700</b>
<b>SMP</b> submitted separately from a RAP or CO modification, with residual soil CO	\$700	\$300	<b>\$1000</b>
<b>Closed Sites:</b> Post-closure action, with SMP, without residual soil CO	\$1050	No fee	<b>\$1000</b>
<b>Closed Sites:</b> Post-closure action, with SMP, with residual soil CO	\$1050	\$300	<b>\$1350</b>
Soil Managed on a Site or Facility other than the Generating Property			
Action	Action Fee	GIS Fee	Total Off-Site Management Fee
<b>Immediate Actions</b> per NR 708.05(6), if SMP submitted in compliance with NR 718.12 (1)	\$350*	No fee	<b>\$350*</b>
<b>Interim Actions</b> per NR 708.11, with SMP and CO applied at other site/facility	\$700	\$350	<b>\$1050</b>
<b>Interim Actions</b> per NR 708.11, with SMP and no CO applied at other site/facility	\$700	No fee	<b>\$700</b>
<b>All other Actions</b> (Remedial actions, CO modifications, etc.) with residual soil CO	\$700	\$300	<b>\$1000</b>
<b>All other Actions</b> (Remedial actions, CO modifications, etc.) with no residual soil CO	\$700	No fee	<b>\$700</b>

Notes:

- 1) \* Fee applies only if a NFA letter is requested.
- 2) If Soil is being managed at a site or facility other than where it was generated than both the On-Site Management Fee and Off-Site Management Fees apply.
- 3) **SMP** – A Soil Management Plan submitted in accordance with NR 718.12 (1) and (2) or NR 718.15.
- 4) **“With residual soil CO”** - site will have a residual soil continuing obligation applied at the source property at the end of the applicable action; remedial action approval, or approval by an addendum to the closure letter.
- 5) **“Without residual soil CO”** - site that will not have a residual soil continuing obligation applied at the source property at the end of the applicable action.

requires the owner of the property receiving the soil to sign and therefore acknowledge the continuing obligations that will be placed on the property. Once signed, there is no need to wait 30 days prior to submitting this document.

The DNR will list and track the activities at these sites or facilities in the Wisconsin Remediation and Redevelopment Database (WRRD). The database is located at: <http://dnr.wi.gov/topic/Brownfields/clean.html>. Information regarding waste management activities conducted through the Wis. Admin. Code § NR 718 exemption process, including the exemption request and documentation of continuing obligations imposed as a result of these activities, will be accessible by looking up the generating site and the site or facility where the material was finally disposed.

## **Soil and Waste Management at Closed Response Action Sites**

### **No Continuing Obligations Affected**

Wisconsin has thousands of sites where the state has granted case closure under the Wis. Admin. Code § NR 700 rules series. The management of contaminated soil and other solid waste at these closed sites may occur as a normal course of reuse and development activities. To determine if continuing obligations may have been placed on a property, case closure letters may be accessed at: <http://dnr.wi.gov/topic/Brownfields/clean.html>. Prior to excavating soil or other solid wastes it is important to understand if there are any conditions that were placed on the site requiring notification to the DNR and possibly DNR approval to proceed with a proposed action.

Where a proposed action at a closed site involves the management of contaminated soil or other solid waste material that *will not impact an existing continuing obligation* (e.g., an engineering control or cover) the person undertaking the actions may be eligible for one or more of the exemptions in Wis. Admin. Code §§ NR 718.12(1), 718.12(2) and/or NR 718.15. The RP should determine if the proposed actions meet the definition of an immediate action under Wis. Admin. Code § NR 708.05, or should be classified as an interim or remedial action that may be eligible for an exemption under Wis. Admin. Code §§ NR 718.12(1) and (2) and/or Wis. Admin. Code § NR 718.15.

### **One or More Continuing Obligations Affected**

In the situation where the proposed action *will impact one or more of the existing continuing obligations* (e.g., engineering control or cover) as identified in the case closure letter or other approval letter, such an action would follow the same procedures as “interim” or “remedial” actions. The approval letter for the site or facility should state whether or not notification to the state is necessary prior to taking certain actions. The property owner would need to notify the DNR in writing at least 45 days in advance of any action, as required by Wis. Admin. Code § NR 727.07. Refer to the adjacent text box for a listing of those continuing obligations that if impacted by the proposed actions require DNR notification and pre-approval.

Such notification should include sufficient information to describe the proposed actions at the site or facility, and how the proposed action will be conducted in accordance with all applicable laws. The DNR recommends the RP submit the Wis. Admin. Code§ NR 718.12(1) and (2) exemption application package as previously described in this guidance, including the soil management plan, as outlined in the “interim and remedial action” section in this guidance. The exemption request should identify that the submittal is both a continuing obligation modification and a Wis. Admin. Code § NR 718 request. The appropriate Wis. Admin. Code NR 749 fee should be submitted to cover the costs of the technical review of the soil management plan and for modifying the case closure database package. The fee table in text box on page 13 lists the fees that may be applicable to this situation.



## **Modifications to Continuing Obligations that Require Advance Notice to the DNR**

At sites or facilities with the following types of “continuing obligations”, if a *proposed* soil and/or solid waste excavation action would impact the continuing obligations (COs) listed below, then the RP must provide the DNR at least 45 days notice prior to taking the proposed action. [See Wis. Admin. Code § NR 727.07.]

Those COs are:

- (1) Removal of a building, cover, including a soil cover, barrier, or engineered containment structure or a portion thereof.
- (2) Removal of a structural impediment, including any structural impediment that prevented completion of the investigation or remediation.
- (3) Change from industrial to non-industrial land use, including where soil standards applied at closure were based on industrial land use exposure assumptions.
- (4) Change in use of a vapor mitigation system, including a passive or active vapor mitigation system.
- (5) Change in use from non-residential setting to residential setting, including where vapor risk screening levels were based on non-residential setting exposure assumptions at closure.
- (6) Construction of a building over residual soil or groundwater contamination by volatile compounds, including where a building did not exist at closure, but where construction of a building without adequate vapor control may result in a completed exposure pathway.
- (7) Site-specific conditions, including any other situation where the agency required notification, on a case-by-case basis, including changes in use or occupancy of a property.

## **Additional Considerations**

Projects involving large-scale disposal or which may include or require items such as a liner system, leachate treatment and an engineered cap, or projects proposing to place the material below the groundwater table, are beyond the scope of this guidance. Check with DNR staff before submitting such a proposal.

### **Non-metallic Mines**

If the excavated contaminated soil is proposed for use in reclaiming a non-metallic mine (e.g., a gravel pit, quarry, etc.), the disposal of such material must be specifically allowed in the mine’s reclamation plan. If not, the reclamation plan needs to be modified prior to DNR approving the disposal of the contaminated soil at the non-metallic mine. The RP should include the following information in the exemption application package:

- Include a copy of the reclamation plan with the exemption application request; and identify where in the plan the placement of contaminated soil is allowed.
- Identify if the non-metallic mine has been dewatered for mining.
- Indicate what the natural groundwater level is expected to be when dewatering is terminated.
- Specify if the proposed use of the waste would be below or within 10 feet of the natural (i.e., not dewater) water table, which is a limitation specified in Wis. Admin. Code § NR 503.08(1)(e) and (2)(d).

### **Natural Heritage Inventory (NHI)**

A NHI screening is recommended if the proposed exemption would have the potential to impact endangered resources, including the potential to impact lands, wetlands or water bodies. The NHI Public portal <http://dnr.wi.gov/topic/ERReview/PublicPortal.html> is an online tool that provides users with an instant response and documented preliminary assessment regarding whether or not a full Endangered Resources Review is necessary to ensure compliance with Wisconsin’s Endangered Species Law.

### **Asbestos Containing Materials (ACMs)**

Where the responsible party proposes to manage asbestos-containing materials that are generated as part of a response action, those materials must be managed in accordance with Wis. Admin. § NR 506.10 and Wis. Admin. § NR 447, where applicable. Those administrative codes only allow the ACM to be disposed of at an “approved

facility” as defined in Wis. Stats. § 289.01(3). Therefore, the DNR cannot grant an exemption under Wis. Admin. § NR 718.15 to manage ACM at a response action site or facility.

### **Other State Laws**

Other state laws may apply to immediate, interim or remedial actions being taken at the response action site or facility. To determine if your project needs other waterways-related approvals or permits please go to: <http://dnr.wi.gov/topic/waterways/>.

Also, Wis. Admin. Code § NR 506.085 prohibits the following activities at solid waste disposal facilities which are no longer in operation, unless specifically approved by the DNR in writing:

- use of the waste disposal area for agricultural purposes;
- establishment or construction of any buildings over the waste disposal area; and
- excavation of the final cover or any waste materials. See “Other State Laws” section above for more details.

The DNR has developed detailed guidance to address the issues associated with building on historic fill sites and licensed landfills. This information can be found at: <http://dnr.wi.gov/topic/landfills/development.html>.

### **Hauler Requirements**

In accordance with Wis. Admin. Code § NR 502.06(2)(j), services for the collection and transportation of contaminated soil are exempt from collection and transportation licensing provided the material is managed in compliance with the general requirements of Wis. Admin. Code §§ NR 502.04 and with NR 718.

### **Reviews and Timelines**

Review of exemption requests will be conducted on a case-by-case basis. It is the applicant’s responsibility to provide information to the DNR sufficient to substantiate the lack of potential hazards to public health, welfare and the environment that will be posed by the contaminated soil or other solid waste (e.g., contaminated sediment or foundry fill) as it is proposed to be managed. The DNR may request review assistance from other programs that administer regulations related to the project. The DNR may request additional information from the applicant if it is necessary to complete the review of the proposal.

The DNR’s goal is to approve or deny an exemption request within 60 calendar days of receiving a complete exemption submittal. Some exemption requests may be reviewed more quickly than 60 calendar days, depending on DNR workload and the completeness and complexity of the request. As part of its review, the DNR may conduct a site inspection to examine the contaminated soil or other solid waste material and the proposed location of the disposal or reuse activity.

- If the request is deemed incomplete, the DNR will reply in writing specifying the information needed to continue the review.
- The DNR may determine that an exemption is appropriate for only a portion of the soils requested, with the remainder requiring disposal at an operating solid waste facility licensed to accept the solid waste.
- If the request is denied, the DNR will reply in writing stating why it was denied, and provide information on appeal rights.
- If the request is approved, the DNR will reply in writing, including any conditions or limitations on the approval. The DNR may set an expiration date for the exemption and may require a renewal to continue the activity.

**NOTE:** Filing an application for a Wis. Admin. Code § NR 718 exemption does not authorize any person to transport, move, or use any waste until the DNR issues a written exemption for the management of the specific contaminated soil and other solid waste material.

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## RR Program Contacts

General questions regarding Wis. Admin. Code §§ NR 718.12 and 718.15 exemptions should be made to:

- Statewide: Paul Grittner, [Paul.Grittner@wisconsin.gov](mailto:Paul.Grittner@wisconsin.gov), (608) 263-8541
- Northeast Region: Kristen Dufresne, [Kristen.Dufresne@wisconsin.gov](mailto:Kristen.Dufresne@wisconsin.gov), (920) 662-5443
- Northern Region: Chris Saari, [Chris.Saari@wisconsin.gov](mailto:Chris.Saari@wisconsin.gov), (715) 685-2920
- South Central Region: Mike Schmoller, [Michael.Schmoller@wisconsin.gov](mailto:Michael.Schmoller@wisconsin.gov), (608) 275-3303
- Southeast Region:
  - Nancy Ryan, [Nancy.Ryan@wisconsin.gov](mailto:Nancy.Ryan@wisconsin.gov), (414) 263-8533
  - Linda Michalets, [Linda.Michalets@wisconsin.gov](mailto:Linda.Michalets@wisconsin.gov), (414) 263-8757
- West Central Region: Matt Thompson, [Matthew.Thompson@wisconsin.gov](mailto:Matthew.Thompson@wisconsin.gov), (715) 839-3750

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This document is intended solely as guidance and does not include any mandatory requirements except where requirements found in statute or administrative rule are referenced. This guidance does not establish or affect legal rights or obligations and is not finally determinative of any of the issues addressed. This guidance does not create any rights enforceable by any party in litigation with the State of Wisconsin or the Department of Natural Resources. Any regulatory decisions made by the Department of Natural Resources in any manner addressed by this guidance will be made by applying the governing statutes and administrative rules to the relevant facts.

The Wisconsin Department of Natural Resources provides equal opportunity in its employment, programs, services, and functions under an Affirmative Action Plan. If you have any questions, please write to Chief, Public Civil Rights, Office of Civil Rights, U.S. Department of the Interior, 1849 C. Street, NW, Washington, D.C. 20240.

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## **Appendix 1**



## Remediation and Redevelopment Program

April 2017

## NR 718 Quick Guide: What Contaminated Soil or other Solid Waste Management Options are Available at Response Action Sites or Facilities?

This table is a general guide that describes what management/exemption options are available to responsible parties (RPs) and possibly others when managing contaminated soil or other solid waste (e.g., contaminated sediments, fill, foundry sand) excavated as a result of an immediate, interim or remedial response action taken under the Wis. Admin. § NR 700 rule series. This is an alternative approach to managing the material as a solid waste at an operating solid waste facility licensed to accept that waste. Wis. Admin. Code § NR 718.12 and NR 718.15 do not apply to management of hazardous waste or TSCA regulated waste.

Questions	NR 718.12(1) Contaminated Soil Exemption	NR 718.12(1) & (2) Contaminated Soil Exemption	NR 718.15 – on site replacement of solid waste other than soil
1. What types of NR 700 response actions are eligible for the exemptions?	<ul style="list-style-type: none"> <li>Immediate Actions - NR 708.05</li> </ul>	<ul style="list-style-type: none"> <li>Interim Actions - NR 708.11</li> <li>Remedial Actions – NR 722 and 724</li> </ul>	<ul style="list-style-type: none"> <li>Interim Actions - NR 708.11</li> <li>Remedial Actions – NR 722 and 724</li> </ul>
2. Who may utilize the NR 718 exemptions?	<ul style="list-style-type: none"> <li>Responsible parties</li> <li>Construction or utility projects<sup>5</sup></li> </ul>	<ul style="list-style-type: none"> <li>Responsible parties</li> </ul>	<ul style="list-style-type: none"> <li>Responsible parties</li> </ul>
3. Is Department pre-approval required to receive the NR 718 exemption and take action?	<ul style="list-style-type: none"> <li>No, but all criteria in NR 718.12(1) must be met</li> </ul>	<ul style="list-style-type: none"> <li>Yes, pre-approval in writing</li> <li>RP is required to provide DNR advance notice of 7 or 45 days, depending on situation</li> <li>RP must wait for approval.</li> </ul>	<ul style="list-style-type: none"> <li>Yes, pre-approval in writing</li> <li>RP is required to provide DNR advance notice of 7 or 45 days, depending on situation</li> <li>RP must wait for approval.</li> </ul>
4. Is a Waste Determination Required?	Yes, documentation is recommended but not required.		
5. Is sampling required under Wis. Admin. Code §§ NR 718.12 and NR 718.15?	Yes. Per NR 718.12(1)(e), RPs must submit data to DNR within 10 business days of receiving data.		

<sup>5</sup> See the note in Wis. Admin. Code § NR 718.12(1) for further clarification on the appropriateness of using this exemption at construction and utility projects.

Questions	NR 718.12(1) Contaminated Soil Exemption	NR 718.12(1) & (2) Contaminated Soil Exemption	NR 718.15 – on site replacement of solid waste other than soil
6. Can EPA’s Synthetic Precipitation Leaching Procedure be used to determine acceptability of soil placement options?	Not as an immediate action; using this alternative method requires DNR approval.	Yes, on a case-by-case basis SPLP may be used to evaluate leachability; requires DNR approval.	Yes, on a case-by-case basis SPLP may be used to evaluate leachability; requires DNR approval.
7. Is a Soil or Waste Management Plan Required?	No	Yes, and contaminated soil management plan needs approval by the DNR.	Yes, and contaminated waste management plan needs approval by the DNR.
8. Do NR 718.12(1) locational requirements apply?	Yes		
9. Is an exemption from location requirements needed?	Yes, in writing from the DNR		
10. What limitations apply to the excavation and placement of this contaminated soil or other solid waste on a site or facility?	<p>RPs soil management actions must comply with NR 718.12(1), including:</p> <ul style="list-style-type: none"> <li>• Meet NR 700 to 754.</li> <li>• Contaminated soil managed must be at concentrations less than Wis. Admin § NR 720 RCLs<sup>6</sup>, and thus not require a performance standard (e.g. cap or cover).</li> <li>• Not pose a threat to public health, safety, welfare and the environment, including a vapor risk.</li> </ul>	<p>RPs soil management actions must comply with NR 718.12(1) and (2), including:</p> <ul style="list-style-type: none"> <li>• Meet NR 700 to 754.</li> <li>• Meet NR 726.13(1)(b) 1 to 5</li> <li>• Meet NR 718.12(1)(c)7.</li> <li>• Not pose a threat to public health, safety, welfare and the environment, including a vapor risk.</li> </ul>	<p>RPs solid waste management actions must comply with NR 718.15, including:</p> <ul style="list-style-type: none"> <li>• Meet NR 700 to 754.</li> <li>• Meet NR 726.13(1)(b) 1 to 5</li> <li>• Meet NR 718.12(1)(c)7.</li> <li>• Not pose a threat to public health, safety, welfare and the environment, including a vapor risk.</li> </ul> <p>Contaminated sediment may be eligible to be managed on the land portion of the source site under this exemption.</p>

<sup>6</sup> If the residual concentrations of contaminated soil attain or exceed the Wis. Admin. Code § NR 720 soil cleanup standards for the land use of the site or facility, thus requiring an engineering control (e.g., a cap or cover), those response actions would be considered an “interim or remedial action” and are subject to Wis. Admin. § NR 718.12(1) and (2).



Questions	NR 718.12(1) Contaminated Soil Exemption	NR 718.12(1) & (2) Contaminated Soil Exemption	NR 718.15 – on site replacement of solid waste other than soil
11. What documentation is required at completion of response actions on or off the site or facility?	Documentation required under Wis. Admin. § NR 708.05(6). Within 45 days of notification to release to the department.	Documentation of completed interim or remedial actions is required under applicable sections of Wis. Admin. §§ NR 708.15, NR 724 & NR 726.	Documentation of completed interim or remedial actions is required under applicable sections of Wis. Admin. §§ NR 708.15, NR 724 & NR 726.
12. Is exemption available for placement on-site, off-site or both?	Contaminated soil may be managed on site or placed only at another location meeting definition of “site” or “facility”	Contaminated soil may be managed on site or placed only at another location meeting definition of “site” or “facility”	Other solid waste may only be managed on the site or facility from which it was excavated. Otherwise, it must be managed at operating, licensed solid waste facility or be granted an exemption under Wis. Admin. § NR 500.
13. Is the property where the material is placed tracked in BRRTS?	Yes, sites or facilities will be tracked in BRRTS and/or SHWIMS.		
14. Do continuing obligations and long-term maintenance apply to the disposal area?	No, as actions triggering the need for a continuing obligation are not considered “immediate actions”	Maybe, depending on the interim or remedial actions.	Maybe, depending on the interim or remedial actions.
15. Who is responsible for any future contamination that might result from an NR 718 action?	<ul style="list-style-type: none"> <li>RP who excavated material</li> <li>Owner of property where material was disposed</li> <li>Hauler in limited situations</li> </ul>	<ul style="list-style-type: none"> <li>RP who excavated material</li> <li>Owner of property where material was disposed</li> <li>Hauler in limited situations</li> </ul>	<ul style="list-style-type: none"> <li>Person who excavated material</li> <li>Owner of property where material was disposed</li> </ul>

This document is intended solely as guidance and does not include any mandatory requirements except where requirements found in statute or administrative rule are referenced. This guidance does not establish or affect legal rights or obligations and is not finally determinative of any of the issues addressed. This guidance does not create any rights enforceable by any party in litigation with the State of Wisconsin or the Department of Natural Resources. Any regulatory decisions made by the Department of Natural Resources in any manner addressed by this guidance will be made by applying the governing statutes and administrative rules to the relevant facts.

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